S.B. CRIMINAL MISC. III BAIL APPLICATION NO.2768/2006
(Ravi Shankar Vs. State)

Date of order : July 11, 2006

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. Ramesh Purohit, for the applicant.
Mr. L.R. Upadhyay, Public Prosecutor.

I have heard learned counsel for the applicant as well as learned Public Prosecutor for the State.

This third bail application was filed on behalf of the applicant while submitting the statements of PW-12 – Satyanarayan, PW-13 – Sanwar Lal, PW-14 – Gopal Lal and PW-15 – Shankar.

The first bail application was rejected by this Court on 22.2.2006. Thereafter, second bail application was dismissed as not pressed. Now, by way of filing the present third bail application while submitting the statement of prosecution witnesses, it is contended by the learned counsel for the applicant that at the time of rejection of second bail application, the statements of PW-12, PW-13, PW-14 and PW-15 were not sent to the counsel though those statements were recorded by the trial court. Now, it is submitted by the learned counsel for the applicant that at the time of rejection of second bail application as not pressed, the counsel for the

applicant was not having the certified copy of the statements of aforesaid prosecution witnesses. Therefore, it is prayed that as per the statements of aforesaid prosecution witnesses, the applicant is entitled to be released on bail. Further, it is contended that as per the facts of the case, there is no allegation against the applicant with regard to recovery of any contraband article. As per the allegation, the registered owner of the vehicle Shankar S/o Surajmal gave power of attorney to the applicant and contraband articles were recovered from Keshev Ram Jat and Mithulal Jat. They were carrying poppy husk in vehicle No.RJ-01-0028 and on 13.11.2005 at the time of search at Sopur near Banas river, the recovery of poppy husk was made from the aforesaid vehicle. As per the prosecution case, the applicant was holding the power of attorney of the said vehicle from the registered owner, therefore, though, he was not present at the place of occurrence, he was prosecuted for offence under Section 8/25 of N.D.P.S. Act. It is contended by the learned counsel for the applicant that only on the basis of said power of attorney executed in favour of the applicant by registered owner of the vehicle, he was implicated in this case. He was not having any knowledge about carrying of poppy husk by main accused Keshav Ram Jat and Mithulal Jat from whom the recovery was made. It is contended by the counsel for the applicant that from the statement of PW-15 Shanker, who is registered

owner of the vehicle, it is clear that on 23.9.2005, power of attorney was given to the applicant and the said power of attorney was removed by registered owner - Shankar and it is categorically stated by him that the day on which the said vehicle was searched and taken into possession by the police, it was in his possession. It is also stated by Shankar in his statement that he has conveyed the police officials that only for one month, the applicant was given power of attorney and thereafter, applicant was removed as power of attorney holder of registered owner.

I have perused the application for taking the statements of witnesses on record. In the application, it is categorically stated that second bail application was rejected on 21.4.2006 and the said application was filed on 19.4.2006 before this Court and in between this period, the statements of prosecution witnesses namely PW-12 to PW-15 were recorded on 15.4.2006 and copies of these statements were not brought to the notice of the counsel who was appearing on that day on behalf of the applicant, therefore, the same were not brought to the notice of the Court and the second bail application was dismissed as not pressed. Thus, it is prayed that these statements may be taken on record and the present bail application may be decided.

It is also contended that the post of

Presiding Officer where the trial is going on is vacant since 4.5.2006 and as per the statement of PW-12 to PW-15, it is obvious that the applicant has been falsely implicated in this case, therefore, he is entitled to be released on bail.

I have perused the statements of witnesses and more specifically the statement of PW-15 – Shanker, who is registered owner of the vehicle.

Taking into consideration the facts and circumstances of the case and without expressing any opinion on the merit of the case, I think it just and proper to enlarge the accused-applicant on bail.

Accordingly, the third bail application filed under Section 439 Cr.P.C. is allowed and it is directed that the applicant Ravi Shankar S/o Pachu Lal shall be released on bail (in FIR No.180/2005, P.S. Bigod) provided he executes a personal bond in the sum of Rs.50,000/- and furnishes two sound and solvent sureties in the sum of Rs.25,000/- each to the satisfaction of the learned trial court for his appearance before that Court on each and every date of hearing and whenever called upon to do so, till the completion of trial.

(GOPAL KRISHAN VYAS), J.

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